

**AGREEMENT BETWEEN
PICTOMETRY INTERNATIONAL CORP. (“PICTOMETRY”) AND
TIPPECANOE COUNTY, IN (“CUSTOMER”)**

1. This order form (“Order Form”), in combination with the contract components listed below:

Section A: Product Descriptions, Prices and Payment Terms

Section B: License Terms:

- Delivered Content Terms and Conditions of Use
- Software License Agreement

Section C: Non-Standard Terms and Conditions

Section D: Tippecanoe County, Indiana Standard Terms and Conditions

Appendix 1: Photogrammetric Product Specifications

Sector Maps

(all of which, collectively, constitute this “Agreement”) set forth the entire understanding between Pictometry and Customer with respect to the subject matter hereof and supersedes all prior representations, agreements and arrangements, whether oral or written, relating to the subject matter hereof. Any modifications to this Agreement must be made in writing and be signed by duly authorized officers of each party. Any purchase order or similar document issued by Customer in connection with this Agreement is issued solely for Customer’s internal administrative purposes and the terms and conditions set forth on any such purchase order shall be of no force or effect as between the parties.

2. In the event of any conflict among any contract components comprising this Agreement, order of precedence for resolving such conflict shall be, from highest (i.e., supersedes all others) to lowest (i.e., subordinate to all others): Tippecanoe County, Indiana Standard Terms and Conditions; Non-Standard Terms and Conditions; Photogrammetric Product Specifications; Product Descriptions, Prices and Payment Terms; License Terms in order as listed above under the heading ‘Section B: License Terms’; and Order Form.
3. All notices under this Agreement shall be in writing and shall be sent to the following respective addresses:

CUSTOMER NOTICE ADDRESS	PICTOMETRY NOTICE ADDRESS
Department of Information Technology Tippecanoe County Government 20 N 3rd St Lafayette, IN 47901	25 Methodist Hill Drive Rochester, NY 14623
Attn: Kent Kroft, GIS Administrator	Attn: General Counsel
Phone: (765) 423-9357	Phone: (585) 486-0093 Fax: (585) 486-0098

Either party may change their respective notice address by giving written notice of such change to the other party at the other party’s then-current notice address. Notices shall be given by any of the following methods: personal delivery; reputable express courier providing written receipt; or postage-paid certified or registered United States mail, return receipt requested. Notice shall be deemed given when actually received or when delivery is refused.

4. This Agreement, including all licenses granted pursuant to it, shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not be assignable by either party except that (i) Pictometry shall have the right to assign its right to receive Fees under this Agreement, provided no such assignment shall affect Pictometry’s obligations hereunder, and (ii) Pictometry shall have the right to assign all its rights under this Agreement to any person or entity, provided the assignee has assumed all of Pictometry’s obligations under this Agreement.
5. IN NO EVENT SHALL EITHER PARTY BE LIABLE, UNDER ANY CAUSE OF ACTION OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING UNDER THEORIES INVOLVING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR BREACH OF WARRANTY), FOR ANY LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY OR OTHERS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. With respect to any claims that Customer may have or assert against Pictometry on any matter relating to this Agreement, the total liability of Pictometry shall, in the aggregate, be limited to the aggregate amount received by Pictometry pursuant to this Agreement.
7. The waiver by either party of any default by the other shall not waive subsequent defaults of the same or different kind.

8. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this Agreement shall remain in full force and effect.
9. Pictometry shall not be responsible for any failure on its part to perform due to unforeseen circumstances or to causes beyond Pictometry's reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, weather, floods, accidents, strikes, failure to obtain export licenses or shortages or delays of transportation, facilities, fuel, energy, supplies, labor or materials. In the event of any such delay, Pictometry may defer performance for a period of time reasonably related to the time and nature of the cause of the delay.
10. In consideration of, and subject to, payment by Customer of the Fees specified in Section A of this Agreement, Pictometry agrees to provide Customer with access to and use of the products specified in Section A of this Agreement, subject to the terms and conditions set forth in this Agreement. Customer hereby agrees to pay the Fees specified in Section A of this Agreement in accordance with the stated payment terms and accepts and agrees to abide by the terms of this Agreement.

This Agreement shall become effective upon execution by duly authorized officers of Customer and Pictometry and receipt by Pictometry of such fully executed document, such date of receipt by Pictometry being the "Effective Date."

PARTIES:

CUSTOMER	PICTOMETRY
TIPPECANOE COUNTY, IN	PICTOMETRY INTERNATIONAL CORP.
(entity type)	a Delaware corporation
SIGNATURE:	SIGNATURE:
NAME:	NAME:
TITLE:	TITLE:
DATE:	EXECUTION DATE:
	DATE OF RECEIPT (EFFECTIVE DATE):

SECTION A

PRODUCT DESCRIPTIONS, PRICES AND PAYMENT TERMS

Pictometry International Corp.
25 Methodist Hill Drive
Rochester, NY 14623

ORDER #

C17430204

BILL TO

Tippecanoe County, IN
Kent Kroft, GIS Administrator
Department of Information Technology
Tippecanoe County Government
20 N 3rd St
Lafayette, IN 47901
(765) 423-9357
kkroft@tippecanoe.in.gov

SHIP TO

Tippecanoe County, IN
Kent Kroft, GIS Administrator
Department of Information Technology
Tippecanoe County Government
20 N 3rd St
Lafayette, IN 47901
(765) 423-9357
kkroft@tippecanoe.in.gov

CUSTOMER ID

A117170

SALES REP

ldavis

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT
527	IMAGERY-Color Digital Orthophotography-6in GSD-Industry-Standard Delivery Format-per sq mi	Product includes: Color Digital Orthophotography - 6 inch GSD ("CDO") consists of 6-inch GSD ortho mosaics delivered to Customer in an open industry-standard digital delivery format not proprietary to Pictometry. See Appendix for mosaic specifications and selected delivery format. Customer shall own the copies of the CDO delivered to the Customer in an industry-standard digital delivery format not proprietary to Pictometry pursuant to this Agreement (the "CDO Deliverables"), notwithstanding anything in this Agreement to the contrary. Pictometry shall retain copies of the CDO Deliverables and shall own those copies. Applicable Terms and Conditions: Order Form	\$100.00	\$90.00 (10%)	\$47,430.00
1	Media Drive Capacity 931G - Drive Model 1T - EXTPOWER	External USB 2.0 / eSATA Externally Powered. Delivery media prices include copying a complete image library onto media. Sub-warehousing sold separately. Applicable Terms and Conditions: Order Form	\$199.00		\$199.00
1	AccuPlus Imagery Bundle w/One(1) Year of EFS Maint & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, five (5) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a period of one years from the initial date of shipment of the EFS software, along with a copy of the updated documentation. Applicable Terms and Conditions: Software License Agreement	\$0.00		\$0.00
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Applicable Terms and Conditions: Order Form	\$0.00		\$0.00
1	AccuPLUS Project Fee - PICT DTM	AccuPLUS project fee for projects without customer-supplied DTM Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$7,500.00	\$0.00 (100%)	\$0.00

Thank you for choosing Pictometry as your service provider.

TOTAL

\$47,629.00

¹Amount per product = ((1-Discount %) * Qty * List Price)

FEES; PAYMENT TERMS

All amounts due to Pictometry pursuant to this Agreement ("Fees") are expressed in United States dollars and do not include any duties, taxes (including, without limitation, any sales, use, ad valorem or withholding, value added or other taxes) or handling fees, all of which are in addition to the amounts shown above and, to the extent applicable to purchases by Customer, shall be paid by Customer to Pictometry without reducing any amount owed to Pictometry unless documents satisfactory to Pictometry evidencing exemption from such taxes is provided to Pictometry prior to billing. To the extent any amounts properly invoiced pursuant to this Agreement are not paid within thirty (30) days following the invoice due date, such unpaid amounts shall accrue, and Customer shall pay, interest at the rate of 1.5% per month (or at the maximum rate allowed by law, if less). In

addition, Customer shall pay Pictometry all costs Pictometry incurs in collecting past due amounts due under this Agreement including, but not limited to, attorneys' fees and court costs.

Due at Initial Shipment of Products	\$47,629.00
Total Payments	\$47,629.00

PRODUCT PARAMETERS

ACCUPLUS IMAGERY

Product:	IMAGERY-Color Digital Orthophotography-6in GSD-Industry-Standard Delivery Format-per sq mi
<i>Coverage Area Format:</i>	Shapefile
<i>Leaf:</i>	Leaf Off: Less than 30% leaf cover

RapidAccess—Disaster Response Program (“DRP”)

Customer is eligible for DRP described below from the Effective Date through the second anniversary of the initial Project delivery. Following payment to Pictometry of amounts due with respect to each subsequent Project, Customer will be eligible for the then-current DRP for a period of two years from delivery of such subsequent Project. Customer must be in good-standing with Pictometry to maintain eligibility for DRP.

- A. Disaster Coverage Imagery at No Additional Charge** – Pictometry will, upon request of Customer and at no additional charge, provide standard quality imagery of up to 200 square miles of affected areas (as determined by Pictometry) upon the occurrence of any of the following events during any period Customer is eligible for DRP:
- ☐ **Hurricane:** areas affected by hurricanes of Category 2 and higher.
 - ☐ **Tornado:** areas affected by tornados rated EF4 and higher.
 - ☐ **Terrorist:** areas affected by damage from terrorist attack.
 - ☐ **Earthquake:** areas affected by damage to critical infrastructure resulting from earthquakes measured at 6.0 or higher on the Richter scale.
 - ☐ **Tsunami:** areas affected by damage to critical infrastructure resulting from tsunamis.
- B. Discounted Rate** – Coverage for areas affected by the events set forth above exceeding 200 square miles will be, subject to Pictometry resource availability, offered to Customer at the then current DRP rates. Also, coverage for areas affected by hurricanes below Category II, tornadoes below EF4 or earthquakes rated below 6.0 on the Richter scale will be, subject to Pictometry resource availability, offered to Customer at the then current DRP rates.
- C. Online Services – Use of Pictometry Connect Explorer™** – Pictometry’s DRP includes the use of Connect Explorer for a term of ninety days from the date of delivery of the DRP imagery. Customer shall have access to the DRP imagery for as long as they maintain an active Connect account.

**PICTOMETRY DELIVERED CONTENT
TERMS AND CONDITIONS OF USE**

These Pictometry Delivered Content Terms and Conditions of Use (the “Delivered Content Terms and Conditions”), in combination with the corresponding Agreement into which these terms are incorporated, collectively set forth the terms and conditions that govern use of Delivered Content (as hereinafter defined) for use within computing environments operated by parties other than Pictometry. As used in the Delivered Content Terms and Conditions the terms “you” and “your” in uppercase or lowercase shall mean the Customer that entered into the Agreement into which the Delivered Content Terms and Conditions are incorporated.

1. DEFINITIONS

- 1.1 “Authorized Subdivision” means, if you are a county or a non-state consortium of counties, any political unit or subdivision located totally or substantially within your boundaries that you authorize to have access to Delivered Content pursuant to the Delivered Content Terms and Conditions.
- 1.2 “Authorized System” means a workstation or server that meets each of the following criteria (i) it is owned or leased by you or an Authorized Subdivision, (ii) it is located within and only accessible from facilities that are owned or leased by you or an Authorized Subdivision, and (iii) it is under the control of and may only be used by you or Authorized Subdivisions.
- 1.3 “Authorized User” means any employee of you or Authorized Subdivisions that is authorized by you to have access to the Delivered Content through an Authorized System.
- 1.4 “Delivered Content” means the images, metadata, data layers, models, reports and other geographic or structural visualizations or embodiments included in, provided with, or derived from the information delivered to you by or on behalf of Pictometry pursuant to the Agreement.
- 1.5 “Project Participant” means any employee or contractor of persons or entities performing services for compensation for you or an Authorized Subdivision that has been identified by written notice to Pictometry prior to being granted access to Delivered Content and, unless Pictometry expressly waives such requirement for any individual, has entered into a written agreement with Pictometry authorizing such access.

2. GRANT OF RIGHTS; RESTRICTIONS ON USE; OWNERSHIP

- 2.1 Subject to the terms and conditions of the Agreement, you are granted nonexclusive, nontransferable, limited rights to:
 - (a) install the Delivered Content on Authorized Systems;
 - (b) permit access and use of the Delivered Content through Authorized Systems by:
 - (i) Authorized Users for performance of public responsibilities of you or Authorized Subdivisions that are to be performed entirely within facilities of you or Authorized Subdivisions;
 - (ii) Project Participants under the supervision of Authorized Users for performance of tasks or preparation of materials using only hard copies (or jpg copies) of Delivered Content solely for fulfilling public responsibilities of you or Authorized Subdivisions to be performed entirely within facilities of you or Authorized Subdivisions; and
 - (iii) individual members of the public, but only through Authorized Users and solely for the purpose of making hard copies or jpg copies of images of individual properties or structures (but not bulk orders of multiple properties or structures) to the individual members of the public requesting them.
- 2.2 You may not reproduce, distribute or make derivative works based upon the Delivered Content in any medium, except as expressly permitted in the Delivered Content Terms and Conditions.
- 2.3 You may not offer any part of the Delivered Content for commercial resale or commercial redistribution in any medium.
- 2.4 You may not distribute or otherwise make available any Delivered Content to Google or its affiliates, either directly or indirectly.
- 2.5 You may not exploit the goodwill of Pictometry, including its trademarks, service marks, or logos, without the express written consent of Pictometry.
- 2.6 You may not remove, alter or obscure copyright notices or other notices contained in the Delivered Content.
- 2.7 All right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in Delivered Content in all media belong to Pictometry or its third party suppliers. Neither you nor any users of the Delivered Content acquire any proprietary interest in the Delivered Content, or any copies thereof, except the limited use rights granted herein.

3. OBLIGATIONS OF CUSTOMER

- 3.1 **Geographic Data.** If available, you agree to provide to Pictometry geographic data in industry standard format (e.g., shape, DBF) including, but not limited to, digital elevation models, street centerline maps, tax parcel maps and centroids, which data, to the extent practicable, shall be incorporated into the Delivered Content. You agree that any of this data that is owned by you may be distributed and modified by Pictometry as part of its products and services, provided that at no time shall Pictometry claim ownership of that data.
- 3.2 **Notification.** You shall (a) notify Pictometry in writing of any claims or proceedings involving any of the Delivered Content within ten (10) days after you learn of the claim or proceeding, and (b) report promptly to Pictometry all claimed or suspected defects in Delivered Content.
- 3.3 **Authorized User Compliance.** You shall at all times be responsible for compliance by each Authorized User with the Delivered Content Terms and Conditions.
- 3.4 **Authorized Subdivision Compliance.** You shall at all times be responsible for compliance by each Authorized Subdivision with the Delivered Content Terms and Conditions.
- 3.5 **Project Participants.** Each notice to Pictometry identifying a potential Project Participant shall include a detailed description of the scope and nature of the Project Participants’ planned work and the intended use of the Delivered Content in such work. Pictometry retains the right to restrict or revoke access to Delivered Content by any Project Participant who does not comply with the terms of the Delivered Content Terms and Conditions.

4. LICENSE DURATION; EFFECT OF TERMINATION

- 4.1 **Term.** The license granted to you in the Delivered Content Terms and Conditions is perpetual, subject to Pictometry’s right to terminate the license in the event you do not pay in full the Fees specified elsewhere in the Agreement, the Agreement is terminated for any reason other than a breach of the Agreement by Pictometry, or as otherwise provided in the Agreement.
- 4.2 **Effect of Termination.** Upon termination of the license granted to you in the Delivered Content Terms and Conditions, you shall immediately cease all use of the Delivered Content, promptly purge all copies of the Delivered Content from all workstations and servers on which any of it may be stored or available at the time, and return hard drive/media containing Delivered Content to Pictometry.

5. TRADEMARKS; CONFIDENTIALITY

- 5.1 **Use of Pictometry’s Marks.** You agree not to attach any additional trademarks, trade names, logos or designations to any Delivered Content or to any copies

of any Delivered Content without prior written approval from Pictometry. You may, however, include an appropriate government seal and your contact information so long as the seal and contact information in no way obscure or deface the Pictometry marks. You further agree that you will not use any Pictometry trademark, trade name, logo, or designation in connection with any product or service other than the Delivered Content. Your nonexclusive right to use Pictometry's trademarks, trade name, logos, and designations are coterminous with the license granted to you in the Delivered Content Terms.

- 5.2 Confidentiality of Delivered Content.** The Delivered Content consists of commercially valuable, proprietary products owned by Pictometry, the design and development of which reflect an investment of considerable time, effort, and money. The Delivered Content is treated by Pictometry as confidential and contains substantial trade secrets of Pictometry. You agree that you will not disclose, provide a copy of, or disseminate the Delivered Content (other than as expressly permitted in the Delivered Content Terms and Conditions) or any part thereof to any person in any manner or for any purpose inconsistent with the license granted to you in the Delivered Content Terms and Conditions. You agree to use your best efforts to assure that your personnel, and any others afforded access to the Delivered Content, protect the Delivered Content against unauthorized use, disclosure, copying, and dissemination, and that access to the Delivered Content and each part thereof will be strictly limited.

6. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES

- 6.1 Limited Warranties; Exclusive Remedy.** Pictometry warrants that the Delivered Content will contain true and usable copies of the designated imagery as of the date of capture. As the sole and exclusive remedy for any breach of the foregoing warranty, Pictometry shall use reasonable efforts to correct any deficiency that precludes use of the Delivered Content in the manner intended.
- 6.2 Disclaimer of Other Warranties.** Except as provided in Section 6.1, above, THE DELIVERED CONTENT IS PROVIDED TO YOU "AS IS" AND "WITH ALL FAULTS." PICTOMETRY MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ACCURACY, ARE HEREBY DISCLAIMED AND EXCLUDED BY PICTOMETRY.
- 6.3 Limitation of Liability.** With respect to any other claims that you may have or assert against Pictometry on any matter relating to the Delivered Content, the total liability of Pictometry shall, in the aggregate, be limited to the aggregate amount received by Pictometry in payment for Delivered Content during the immediately preceding twenty-four (24) month period.

7. MISCELLANEOUS PROVISIONS

- 7.1 Restricted Rights.** Delivered Content acquired with United States Government funds or intended for use within or for any United States federal agency is provided with "Restricted Rights" as defined in DFARS 252.227-7013, Rights in Technical Data and Computer Software and FAR 52.227-14, Rights in Data-General, including Alternate III, as applicable.
- 7.2 Governing Law.** This License Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflicts of law principles.

[END OF DELIVERED CONTENT TERMS AND CONDITIONS]

**PICTOMETRY SOFTWARE
LICENSE AGREEMENT**

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE. BY USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE.

1. **GENERAL.** The software ("Pictometry Software") and any written materials that accompany the software ("Documentation") in any media or form are licensed, not sold, to you by Pictometry International Corp. ("Pictometry") for use only under the terms of this License. Pictometry reserves all rights not expressly granted to you in this License.
2. **LICENSE.** Subject to the terms and conditions of this License, you are granted a limited, non-transferable, terminable, non-sublicenseable, non-exclusive license to install and use the Pictometry Software and the Documentation (collectively, the "Proprietary Materials") solely for internal use. Use of the functionality provided by the Pictometry Software other than for your internal use is prohibited, except with the prior written approval of Pictometry. You may make one copy of the Pictometry Software in machine-readable form for backup purposes only; provided that the backup copy must include all copyright and other proprietary notices contained in the original. You will not and will not enable others to decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, create derivative works of, or tamper with or disable any security or monitoring features within the Pictometry Software. Any attempt to do so is a violation of the rights of Pictometry and its licensors.
3. **TITLE.** The Proprietary Materials are confidential information of, trade secrets of, and are proprietary to Pictometry. Title to the Proprietary Materials is and will remain in Pictometry and its licensors. All applicable rights to patents, copyrights, trademarks, trade secrets, and other intellectual property rights in the Proprietary Materials are and will remain in Pictometry and its licensors. You will not assert any right, title or interest in the Proprietary Materials provided to you under this License, except for the express license granted to you hereunder. You will not remove any copyright or other proprietary notice or legend contained on or included in any Proprietary Materials and you will reproduce all such information on all copies made hereunder. You will keep the Proprietary Materials free of all claims, liens and encumbrances.
4. **DISCLAIMERS OF WARRANTY.** USE OF THE PICTOMETRY SOFTWARE IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PICTOMETRY SOFTWARE IS PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND PICTOMETRY HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PICTOMETRY SOFTWARE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. PICTOMETRY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN OR PROVIDED BY THE PICTOMETRY SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE PICTOMETRY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE PROPRIETARY MATERIALS WILL BE CORRECTED.
5. **LIMITATION OF LIABILITY.** IN NO EVENT WILL PICTOMETRY BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE PICTOMETRY SOFTWARE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE), EVEN IF PICTOMETRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL PICTOMETRY'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) CAUSED BY, ARISING OUT OF OR IN ANY WAY RELATED TO THE PICTOMETRY SOFTWARE EXCEED THE AMOUNT OF FIFTY DOLLARS (\$50.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
6. **TERMINATION.** This License will terminate automatically without notice from Pictometry if you fail to comply with any term of this License. Upon the termination of this License, you will cease all use of the Pictometry Software and destroy all copies, full or partial, of the Proprietary Materials.
7. **MISCELLANEOUS PROVISIONS.**
 - A. **Restricted Rights.** Pictometry Software acquired with United States Government funds or intended for use within or for any United States federal agency is provided with "Restricted Rights" as defined in DFARS 252.227-7013, Rights in Technical Data and Computer Software and FAR 52.227-14, Rights in Data-General, including Alternate III, as applicable. Pictometry must be notified in advance of any license grants to United States federal governmental entities. The Pictometry Software is developed for general use in a variety of applications and is not developed or intended for use in any inherently dangerous applications or applications that could lead to property damage, personal injury or death. If you use the Pictometry Software in such applications, then you will be responsible for taking all appropriate fail-safe, backup, redundancy, and other measures to ensure the safe use of the Pictometry Software in such applications, including but not limited to, in any nuclear, aviation, mass transit, public safety or medical applications.
 - B. **Foreign Trade Restrictions.** The parties acknowledge that certain information, software technology, accompanying documentation and technical information may be subject to United States export control laws. You will not directly or indirectly export or re-export the Pictometry Software in violation of the Export Administration Regulations of the U.S. Department of Commerce.
 - C. **Governing Law.** This License will be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflict of laws principles.
 - D. **Assignment.** You may not assign this License without Pictometry's prior written consent. Any assignment in violation of this License will be null, void and of no force and effect. For all purposes under this License, any merger, consolidation, spin-off, acquisition or change-in-control will be deemed an assignment.
 - E. **Partial Invalidity; Survival.** If any provision of this License is held invalid or unenforceable by competent authority, that provision will be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it will then appear. The total invalidity or unenforceability of any particular provision of this License will not affect its other provisions and this License will be construed in all respects as if the invalid or unenforceable provision were omitted. The provisions of this License that by their nature would survive its termination will survive indefinitely.

- F. **Force Majeure.** Neither party will be liable for any costs or damages due to nonperformance under this License arising out of any cause not within the reasonable control of such party and without its fault or negligence. Neither party will be liable for any delay or failure in the performance of its obligations under this License that directly results from any failure of the other party to perform its obligations as set forth in this License.
- G. **Waiver.** No waiver of a breach of any term of this License will be effective unless in writing and duly executed by the waiving party. No such waiver will constitute a waiver of any subsequent breach of the same or any other term of this License. No failure on the part of a party to exercise, and no delay in exercising any of its rights hereunder will operate as a waiver thereof, nor will any single or partial exercise by a party of any right preclude any other or future exercise thereof or the exercise of any other right. No course of dealing between the parties will be deemed effective to modify, amend or discharge any part of this License or the rights or obligations of any party hereunder.
- H. **Entire Agreement; Construction.** This License contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous understandings regarding that subject matter. No amendment to or modification of this License will be binding unless in writing and signed by Pictometry. There are no representations, warranties, or obligations of any party not expressly contained herein. The headings in this License are for convenience only. They do not constitute a portion of this License and will not be used in any construction of it.

[END OF SOFTWARE LICENSE AGREEMENT]

SECTION C

NON-STANDARD TERMS AND CONDITIONS

1. Online Services Eligible Users: Notwithstanding anything in the Online Services General Terms and Conditions incorporated in this Agreement to the contrary, the terms 'Eligible User' and 'Eligible Users' as defined in those Online Services General Terms and Conditions shall, for the purposes of this Agreement, also include each 'Authorized User' as that term is defined in the Delivered Content Terms and Conditions of Use incorporated in this Agreement.

2. Applicable Law: Notwithstanding anything to the contrary set forth elsewhere in this Agreement, this Agreement and any modifications, amendments or alterations shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Indiana, excluding its conflicts of law principles. Each party irrevocably consents to the exclusive jurisdiction of the courts of the State of Indiana in connection with any action to enforce the provisions of this Agreement, to recover damages or other relief for breach or default under this Agreement, or otherwise arising under or by reason of this Agreement.

[END OF NON-STANDARD TERMS AND CONDITIONS]

SECTION D

TIPPECANOE COUNTY INDIANA STANDARD TERMS AND CONDITIONS

Non-Discrimination – Pursuant to IC 22-9-1-10, Pictometry and its subcontractors, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of the covenant may be regarded as a material breach of this Agreement.

Default - If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

Governing Law; Exclusive Jurisdiction; Exclusive Venue - This Agreement is entered into in Indiana and all matters arising under or related to this Agreement shall be governed by and construed in accordance with the substantive law (and not the law of conflicts) of the State of Indiana. Courts of competent authority located in Tippecanoe County, Indiana shall have sole and exclusive jurisdiction of any action arising out of or in connection with the Agreement, and such courts shall be the sole and exclusive venue for any such action.

Severability - Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Force Majeure - In the event that any party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies or communication line failure not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to other parties and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of such notice of the Force Majeure Event, the party whose ability to perform has not been so affected may be given written notice to terminate this Agreement.

Affirmative Action - Contractor For the work specified in this Contract, Pictometry agrees to take affirmative action to insure that applicants and employees of Pictometry (and any Subcontractors) are treated in a manner which provides equal employment opportunity and tends to eliminate inequality, based upon race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status or status with regard to public assistance. Affirmative action shall include but not be limited to the issuance of a policy statement regarding equal employment and its communication to all personnel involved in recruitment, hiring, training, assignment, and promotion; notification of all employment sources of company policy and active efforts to review the qualifications of all applicants regardless of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status or status with regard to public assistance; recruiting in the minority/female group community for employees; and establishing and internal system of reporting concerning equal employment, recruiting, hiring, training, upgrading and the like. Breach of the obligation to take affirmative action shall be a material breach of the contract for which the County shall be entitled to at its option: (1) Cancel, terminate, or suspend the contract in whole or in part; and/or (2) Declare Contractor ineligible for further County contracts.

E-Verify Employment Eligibility Verification - In accordance with IC 22-5-1.7, if Pictometry has any employees or subcontractors, and the E-Verify program as defined in IC 22-5-1.7-3 is in existence, **Pictometry** shall enroll in and verify the work eligibility status for all of Pictometry's newly hired employees through the E-Verify program. Pictometry shall not knowingly employ or contract with an unauthorized alien, nor shall Pictometry retain an employee or contract with a person that **Pictometry** subsequently learns is an unauthorized alien.

Pictometry shall:

Sign and deliver to County a sworn affidavit that affirms that Pictometry has enrolled and is participating in the E-Verify program;
Provide documentation to County substantiating that Pictometry has enrolled and is participating in the E-Verify program; and
Sign and deliver to County an affidavit affirming that Pictometry does not knowingly employ an unauthorized alien.

Pictometry shall require all subcontractors, who perform work under this contract, to certify to Pictometry in a manner consistent with federal law that the subcontractor, at the time of certification, does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Pictometry agrees to maintain this certification throughout the duration of the term of each subcontract.

County may terminate the contract immediately if Pictometry fails to cure a breach of this provision no later than thirty (30) days after being notified thereof by County or another state agency or political subdivision. In accordance with IC 22-5-1.7, any challenge by

Pictometry to a termination pursuant to this provision must be made in Tippecanoe County Superior or Circuit Court not later than twenty (20) days after Pictometry receives notice of such termination.

[END OF-TIPPECANOE COUNTY INDIANA STANDARD TERMS AND CONDITIONS]

APPENDIX 1

PHOTOGRAMMETRIC PRODUCT SPECIFICATIONS

Color Digital Orthophotography

Product Overview:

Seamless, digital ortho-mosaic produced from individual frames and tiled to County's preferred tiling scheme. Specifications and deliverables as follows:

Acquisition:

Frame Overlap: 60% forward/30% side

Capture Window: solar elevation >30 degrees or most optimal 4-hour window

Environmental Conditions: ground free of snow cover; imagery free of clouds, fog, haze, smoke, and dust

Deciduous Vegetation: less than 30% full bloom

Camera System: Pictometry PentaView Sensor based system; dynamic range of 12 bits per band, RGB, resampled to 8 bits during processing

Ground Control:

Points surveyed to meet ASPRS Positional Accuracy Standards Edition 1 Version 1 – November 2014

Image Processing:

Aerial Triangulation: Pictometry will perform aerial triangulation utilizing post-processed exterior orientations, calibrated camera model(s), and specified ground control points as input to the aerial triangulation process. Aerial triangulation process to be performed using Trimble Inpho's Match-AT software.

Elevation Surface: Best available terrain model will be used to support orthorectification; if surface is found to be of insufficient accuracy/quality to support accuracy specifications, Pictometry will use automated surface extraction with limited manual editing to generate a surface to support generation of orthoimagery.

Orthorectification: Pictometry will use the triangulated exterior orientation values, calibrated camera interior orientation models, and the specified digital terrain model to perform the Orthorectification. When rectification requires a resampling of the source imagery, cubic convolution will be used.

Mosaicking: Global color balancing will be applied to all orthophotos to create homogeneous orthophotos within the project area. Local adjustments of brightness values, color, and contrast will be performed if needed. There will be no obvious seam edge between two adjacent orthophotos. Mosaic will be created using automated seamline steering, with manual edits to eliminate feature misalignment caused by seamlines which pass thru features above the elevation surface. Feature alignment across seamlines will be 3 pixels or better. When possible, seamlines will be steered away from elevated features to improve orthophoto quality. Final mosaic will be tiled and named according to the agreed upon schema for delivery or as specified below.

Tiling Schema: Imagery will be tiled according to mutually agreed upon schema.

Deliverables:

The following will be delivered:

6-inch GSD GSD ortho mosaic tiles (GeoTIFF format; according to specified tiling schema)

6-inch GSD area-wide ortho mosaic (RGB, ECW format)

6-inch GSD area-wide ortho mosaic (RGB, MrSID format)

FGDC compliant metadata

AT/Survey report

Orthomosaic Accuracy:

6-inch GSD: RMSE(x or y) 1.30 ft; RMSE(r) 1.84 ft; NSSDA (95%) 3.20 ft;

SECTOR MAP

